

Appl. No. 10/619,286
Amdt. Date April 22, 2004
Response to Office Action dated April 7, 2004

REMARKS

In the April 7, 2004, Office Action, the Examiner remarked that parent application 09/821,552 does not have antecedent basis for the "patient monitoring system" recited in claim 1. Applicants respectfully direct the Examiner's attention to the following recitations in the U.S. patent no. 6,671,905 that issued from the parent application:

Col. 2, lines 4-18: *One of the problems in the art of prone positioning therapeutic beds is to provide electrical connections to the bed for both the power and controller equipment that moves the bed and for the patient monitoring systems on the bed.* To allow unrestricted rotation of the bed of WO 99/62454, electrical power has been provided by wire brushes at the interface between the rotating part of the bed and the nonrotating part of the bed. However, due to vibration and other abrupt movements, such wire brushes cause problems of electrical intermittence, which can be detrimental to the therapy of the patient. *A direct, wired electrical connection would be preferable* to eliminate such intermittence, provided that the wired electrical connection is capable of articulation during movement of the rotating part of the bed into the prone position.

Col. 10, line 59 – col. 11, line 51: FIGS. 8 through 13 illustrate an apparatus at the foot of bed 10 *for supplying a direct electrical connection between non-rotating base frame 16 and rotating patient support platform 20.* . . . This arrangement provides a *direct, wire-based electrical connection* to the rotating part of bed 10 while still allowing a complete rotation of patient support platform 20 in either direction. . . .

Furthermore, original claim 17 of the parent application, *which was part of the original specification but was cancelled due to a restriction requirement*, recited the following:

17. A therapeutic bed comprising: a base frame; a patient support platform having a longitudinal rotational axis, said patient support platform being rotationally mounted on said base frame such that said patient support platform is capable of rotation about said longitudinal rotational axis; an *electrically powered patient monitoring system* connected to said patient support platform; and a direct electrical connection between said base frame and said *patient monitoring system*, said direct electrical connection allowing rotation of said patient support platform into a prone position.¹

¹ See U.S. Patent Publication N . 20020138906, at claim 17 (emphasis added).

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Claim 17 of the parent application is almost identical to claim 1 of this *divisional* application, except that claim 1 is somewhat broader. In consideration of these references in the parent application, Applicants respectfully ask the Examiner to withdraw the objection to claim 1.

The Examiner also remarked that the pending application is not a "division" of 09/821,552 because the specifications are not identical.² Specifically, the Examiner stated that there was no support in the parent application for the term "data" in the divisional application.

For the record, Applicants respectfully take a different view on whether the parent application adequately supported the use of that term.³ But Applicants wish to completely remove this issue as the source of any potential defense to the validity of any patent that may issue from this application. Therefore, Applicants have amended the title, abstract, specification,

² Applicants assume that the Examiner does not require absolute identity between the specifications, but rather that a divisional disclose and claim only subject matter disclosed in the earlier or parent application. MPEP 201.06.

³ It is of course fundamental that a limitation that is added to a claim must find "support" in the originally filed application. *Schering Corp. v. Amgen Inc.*, 222 F.3d 1347, 1352 (Fed. Cir. 2000). By the same rationale, for a claim to have the benefit of the date of an earlier filed application, its limitations must find support in the earlier filed application. *Tronzo v. Biomet, Inc.*, 156 F.3d 1154, 1159 (Fed. Cir. 1998). At the same time, that support need not be in the form of a verbatim statement in the specification. Different language that expresses the same meaning found in the originally filed specification may be sufficient. "[I]psis verbis disclosure is not necessary to satisfy the written description requirement of section 112. Instead, the disclosure need only reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question." *Fujikawa v. Wattanastin*, 93 F.3d 1559, 1570 (Fed. Cir. 1996). In *Schering*, the Federal Circuit held that "[t]he fundamental inquiry is whether the material added by amendment was inherently contained in the original application." 222 F.3d at 1352. Perhaps the most stringent articulation of the test is found in *Purdue Pharma L.P. v. Faulding Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000), where the Federal Circuit held that: "One skilled in the art, reading the original disclosure, must immediately discern the limitation at issue in the claims."

Applicants respectfully submit that these tests were met by the disclosure of the parent. The parent application described two kinds of electrical connections to the rotating part of the bed. First, "electrical connections" were needed "for the patient monitoring systems on the bed." Second, there was a need to provide "electrical power" to the rotating part of the bed. As one way of meeting these dual needs, the parent application disclosed an embodiment involving a "direct, wired electrical connection to the patient support platform may be provided with a flexible printed circuit board (PCB)," which "provides power and electrical signals to the rotating part of the bed." In the context of the claims and specification of the pending application, Applicants substituted the term "data" as a shorthand for "electrical signals" that are used to communicate with a "patient monitoring system" on the rotating part of the bed.

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and claims to substitute the term "electrical signals," used in both the parent and pending applications, for the term "data."

The undersigned believes that these revisions to the specification moot the Examiner's requirement (or, if necessary, that the arguments presented in footnote 3 overcome the requirement) that paragraph [0001] be revised to delete the reference to a divisional.

Restriction Requirement

The Examiner stated that "Applicant is required . . . to elect a single disclosed species for prosecution on the merits . . . if no generic claim is finally held to be allowable." At the same time, the Examiner acknowledged that claims 7 and 17 are generic.

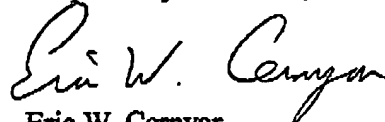
Upon review of the claims, Applicant concludes that the most of the claims are generic. Claims 1, 2, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17, 18, and 20 are equally associated with both species. Claims 3 and 15 are associated primarily with the species of Figures 12 and 13. Claims 4, 12, 13, and 19 are associated primarily with the species of Figures 18-20. Applicants cautiously use the term "associated primarily" because Applicants do not wish, before any prosecution has occurred on the merits, to disclaim any of the potential subject matter of the claims. In other words, Applicants do not, at this point, disclaim the possibility that claims 3 and 15 could read on the species of Figs. 18-20, or that claims 4, 12, 13, and 19 could read on some version of the species of Figs. 12 and 13.

Therefore, Applicants provisionally elect the species associated with Figs. 18-20. Applicants understand that, on the basis of this election, prosecution will proceed on the following claims: 1-2, 4-14, and 16-20. Applicants understand that the restriction requirement will be withdrawn if any of the generic claims are allowed.

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Believing that all matters raised in the Examiner's April 22, 2004, Office Action, have been addressed, Applicant respectfully asks that the claims be examined, allowed and passed to issue.

Respectfully submitted,



Eric W. Cernyar
Reg. No. 45,919
8023 Vantage Drive
San Antonio, Texas 78230
(210) 863-0063 (cell phone)
(210) 255-6969 (facsimile)